

(2011) 02 CAL CK 0016

Calcutta High Court

Case No: C.R.A. No. 281 of 1989

Ananda Paul

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Feb. 21, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 302, 304B, 34

Citation: (2011) 3 CHN 823

Hon'ble Judges: Md. Abdul Ghani, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Milon Mukherjee, for the Appellant; Tapan Dutta Gupta for the State, for the Respondent

Final Decision: Allowed

Judgement

Kalidas Mukherjee, J.

this appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge, 6th Court, Midnapore, sentencing each of the appellants Ananda Paul and Smt. Ghanteswari Paul to suffer R.I. for life and also to pay a fine of Rs.2,000/- in default to suffer R.I. for six months u/s 302/34 Indian Penal Code, and also to suffer R.I. for three years and to pay a fine of Rs. 500/-, in default to suffer R.I. for two months u/s 201/34 Indian Penal Code. The learned Judge further sentenced Ghanteswari to suffer R.I. for two years and to pay a fine of Rs. 500/- in default to suffer R.I. for two months u/s 498A Indian Penal Code. Each of the appellants Mukunda Paul and Sandhya Dey was sentenced to suffer R.I. for three years and to pay a fine of Rs.500/- in default to suffer R.I. for two months u/s 498A Indian Penal Code. The learned Trial Judge directed that all the sentences would run concurrently. Appellant Ghanteswari died during the pendency of this appeal and the appeal filed by her has abated vide order dated 02.09.2009.

2. The prosecution case, in short, is that one Narayan Dey lodged complaint with the O.C. Chandrakona P.S. alleging that on 19th Jaistha, 1392 B.S. his eldest daughter Lakshmi Rani Dey was married with Mukunda Paul. At the time of marriage ornaments and other articles were gifted. After six months of marriage, the accused persons started committing torture upon Lakshmi Rani. But due to the intervention of the Chairman of Ramjibpur Municipality, the matter was settled and Lakshmi Rani was again sent to her matrimonial home. But, thereafter, the accused persons again committed torture upon her and, as a result, the informant took back his daughter to his house. On 20th Agrahayan, 1393 B.S. through the intervention of the Chairman of Ramjibpur Municipality and others Lakshmi Rani was again sent to her matrimonial home. One day, Ananda Paul, the brother-in-law of Lakshmi Rani came to the house of P.W.2 and informed that Lakshmi Rani committed suicide by hanging. The informant thereafter lodged complaint with the P.S. and Chandrakona P.S. Case No. 1/16 dated 12.2.1987 was started u/s 498A/306/34 Indian Penal Code.

3. The learned Trial Judge framed charge u/s 498A, Indian Penal Code against six accused persons; u/s 302, 201/34, Indian Penal Code against Ghanteswari and Ananda Pal. The accused persons pleaded not guilty and claimed to be tried.

4. Mr. Mukherjee appearing on behalf of the appellants submits that there is no allegation of dowry in the FIR. It is contended that no compromise was effected in writing and, as such, no reliance can be placed upon the alleged settlement made through the intervention of Ramjibpur Municipality. Mr. Mukherjee submits that the alleged ill treatment and torture as told by some of the P.Ws. cannot be relied upon, inasmuch as, those P.Ws. in their earlier statements to the I.O. did not make such allegation regarding ill-treatment and torture.

5. Mr. Mukherjee submits that the post mortem report and the inquest have not been marked Exhibit in this case, although, the S.I. of police and the Autopsy Surgeon have been examined by the prosecution. Mr. Mukherjee submits that the Autopsy Surgeon could not come to a definite conclusion whether it was a case of suicide by hanging or homicide. Mr. Mukherjee submits that under such circumstances, the evidence adduced by the prosecution cannot be relied upon and the learned Trial Judge was not justified in convicting the appellants and passing the sentence under impugned judgment.

6. Mr. Dutta Gupta appearing on behalf of the State submits that the victim died two years after marriage. As regards the nature of death, evidence of the Autopsy Surgeon, absence of inquest report and post-mortem report, Mr. Dutta Gupta submits that it was a case of unnatural death. Mr. Dutta Gupta submits that P.W.2 is the father of the victim and he stated that he took back his daughter to his house where she stayed for ten months. Mr. Dutta Gupta further submits that regarding ill treatment a salish was held through the intervention of P.W.5. Mr. Dutta Gupta submits that if charge u/s 302 Indian Penal Code is not attracted, the conviction can be altered to section 304B Indian Penal Code.

7. It appears that the incident occurred on 11.2.1987 in the morning and thereafter P.W.1 visited the house of the accused persons and found that the dead body of the victim was lying on the floor of a room in the first floor and a rope was found near the dead body. P.W.1 has further stated that he found one mark near the throat of the deceased and thereafter he lodged information with the P.S. regarding the unnatural death. It further appears that on the next day, that is, on 12.2.1987 at 8.45 hours the FIR was lodged by the father of the victim. Prosecution did not produce the G.D. to prove the nature of the information lodged by P.W.1 regarding the unnatural death of the victim. The report submitted by the I.O. in the U.D. Case No. 4 dated 11.2.1987 has also not been produced. It leaves room for doubt as to what was the nature and extent of the information lodged by P.W.1 regarding the unnatural death of Lakshmirani.

8. Mr. Mukherjee has referred to a decision reported in Vithal Tukaram More and Others Vs. The State of Maharashtra, and submits that Mukunda was not present at the time and place of occurrence. The charge was framed u/s 302 IPC, but, there being no direct evidence, we are to look into the circumstantial evidence as adduced by the prosecution.

9. P.W.1 has stated that only the mother-in-law of the deceased and one brother-in-law, named, Ananda were present. He has stated that he did not find the other inmates of the house and came to learn from the mother-in- law Ghanteswari that her daughter-in-law committed suicide by hanging.

10. P.W.2 who is the father of the victim has stated that after marriage of her daughter, her husband, mother-in-law and other inmates of the house committed ill-treatment upon her; he took her daughter back to his house where she stayed for ten months. It is in his evidence that with the intervention of the Chairman of Ramjibanpur Municipality the matter was settled on condition that P.W.2 would pay the price of a bicycle within one week and on that condition his daughter was accepted in the house of the accused persons and then he returned to Calcutta. It is in his evidence that as per terms of the settlement he handed over Rs. 900/- to accused Gopal, the elder brother of Mukunda.

11. In the FIR there is no mention that there was a demand for a bicycle and as per terms of compromise P.W.2 was asked to give a bicycle to his son-in-law and as per promise he had to pay the sum of Rs.900/- for the purchase of such bicycle.

12. P.W.5 Gobardhan Das, the Chairman of Ramjibanpur Municipality has stated that there was an allegation from the father of Lakshmirani that he could not give one bicycle to the groom as agreed before the marriage. P.W.5 has stated that he asked the father of the girl to give the bicycle and also asked the mother-in-law and one of the elder brothers of the husband of Lakshmirani not to commit torture upon her and, in this way, he effected the compromise. It is significant to note that neither in the FIR nor in the evidence of P.W.2 and P.W.5 there was any date of holding such

salish through the intervention of P.W.5. P.W.5 has stated in cross-examination that no proceeding or result of compromise was reduced into writing and he could not recollect if he stated to the police that he effected the promise in presence of both sides and there was allegation of ill-treatment and torture committed upon Lakshmirani. The absence of the date of holding such salish and non-mentioning of the demand for a bicycle in the F.I.R. are very much significant. Under such circumstances, the alleged demand for dowry loses importance and, therefore, the evidence in this regard is not convincing.

13. P.W.14 (I.O.) has stated in cross-examination that P.W.5 Gobardhan Das did not state to him that the father of the girl reported about ill-treatment and torture and that he failed to give them a bicycle as per promise made at the time of marriage and that P.W.5 asked the father of the victim to give a bicycle or to pay the price thereof or not to commit torture upon the girl anymore. It is, therefore, clear that the evidence of P.W.2 regarding the demand for a bicycle and as per the terms of salish the payment of Rs.900/- by the P.W.2 to the family of the accused was introduced for the first time at the time of trial and the same is not worthy of credence.

14. It is in the evidence of P.W.1 and P.W.2 that at the time of death of victim the mother-in-law and brother-in-law (Ananda) only were present in the house of the accused persons. It is also in evidence that Ananda went to P.W.2 to inform him of the death of Lakshmirani by suicidal hanging. It is also in the cross-examination of P.W.2 that he took Ghanteswari and Ananda with him to the P.S. accompanied by P.W.1 and handed over the two persons to the police and lodged the FIR. It is, therefore, clear that appellant Ananda was all along present after the occurrence and there was no attempt on his part to flee away. Ananda even went to Calcutta to inform P.W. 2 about the death of the victim. It is also clear that appellant Mukunda at that time was not present in the village and from the evidence of P.W.2 it is clear that Mukunda used to stay in Calcutta in connection with his job.

15. P.W.2 has stated in his cross-examination that his daughter till her marriage used to live with him in Calcutta. He has further stated that in the matrimonial home his daughter like other members of the family had to take her bath in a pond and to ease herself in open field. It is in the evidence of P.W.2 that the victim stayed in his house for about 10 months. It was suggested to P.W.2 that the victim was not willing to marry Mukunda and, as such, she was unwilling to stay in her matrimonial home which was denied by P.W.2.

16. P.W. 12 the Autopsy Surgeon has noted the following injuries.

On examination I found multiple small abrasion over right forearm. I found one circular transversely continuous ligature mark low down the neck below the thyroid cartilage with perichondration of skin, with ecchymosis. Multiple bruises around the ligature mark were noticed.

On dissection I found laceration of carotid vessels and extravasation of blood, fracture of hyoid bone. Atlantoaxial joint and cervical vertebra are found in tact.

Both lungs, brain, larynx, trachea and pleura were found congested. I found left chamber of heart empty, right chamber slight blood. Death in my opinion was due to violent asphyxia, ante-mortem strangulation by ligature, homicidal in nature.

17. P.W.12, the doctor, has opined that there were multiple abrasions due to scuffle when the deceased tried to resist the attempt to strangulate; strangulation by ligature with the help of the rope can finish a person within 1 to 11/2 minutes. P.W.12 has further stated that from the post-mortem examination he was cent percent sure that it was not a case of suicide by hanging. In the cross-examination he has admitted that he wrote in the postmortem report "appears to be homicidal in nature". He has stated that he held post-mortem examination after going through the inquest report and he preserved the viscera. It is in his evidence that the name of the husband or father of the deceased was not mentioned and the age of the deceased was mentioned as 15 years.

18. It is worth mentioning here that the post-mortem report and the inquest report have not been exhibited.

19. P.W.14, the S.I. of police, has stated that on 11.2.1987 on the basis of an information one U.D. case bearing No. 4 dated 11.2.1987 was started and in connection with the investigation of the U.D. case he held the inquest over the dead body and made the seizure of the rope. The most striking feature in this regard is that the I.O. did not produce inquest report.

20. From the evidence of P.W.12 it appears that the viscera were preserved, but, there is no report on examination of such viscera. P.W.12 could not opine definitely whether it was a case of suicidal hanging or homicide. In this connection the evidence of P.W.6 is significant.

21. P.W. 6, Debidas Ghosh, is a registered medical practitioner. He has stated that on 11.2.1987 Ananda Pal called him in his house and told that one person had become senseless; he accompanied him to his house and found that a female patient was lying dead on the floor of a room in the first floor. He has stated that he noticed a mark on the throat of the deceased. P.W.6 is, therefore, the first medical practitioner who upon examination of the body found her dead with only one mark on the throat of the deceased.

22. P.W.12, the Autopsy Surgeon, found multiple small abrasions over right forearm. According to the prosecution case as set forth in the FIR and as per the evidence of P.Ws, the victim died due to suicidal hanging, but, the Autopsy Surgeon (P.W.12) wrote in the post-mortem report "appears to be homicidal in nature." In view of such evidence we find that prosecution could not prove that it was a case of homicide punishable u/s 302, Indian Penal Code. Moreover, since there is no cogent

evidence regarding the demand for dowry, it cannot come within the purview of section 304B, Indian Penal Code.

23. Having regard to the circumstances as discussed above, we find that the prosecution could not prove the chain of circumstances leading to the death of the victim punishable u/s 302 Indian Penal Code. The evidence regarding the alleged torture and cruelty is also not convincing. Under the circumstances, we are of the considered view that the prosecution could not prove the charges levelled against the appellants. We, therefore, set aside the impugned judgment of conviction and sentence. The appellants are acquitted of the charges. The appeal is allowed.

24. Let a copy of this judgment along with the lower Court records be sent to the learned Court below immediately.

25. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.